IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Bail Appl..No. 1642 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.3882/2006 Dated 07/07/2006 SC.1/2006 of SESSIONS COURT, ALAPPUZHA

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PETITIONER

BINEESH, S/O NATESAN,
KALATHIL VEEDU, WARD NO.8, CHERAI DESOM,
PALLIPPURAM PANCHAYATH, ERNAKULAM.

BY ADV. SRI.RAJIT
SRI.M.L.SURESH KUMAR

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADDL. DIRECTOR GENERAL OF PROSECUTIONS
SRI. V.K. MOHANAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON **20/03/2007** PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Bail Application No. 1642 of 2007

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Dated, this the 20th day of March 2007

ORDER

The petitioner who is the 7th accused in Crime No. 227 of 2005 of Mararikulam Police Station for offences punishable under Sections 120 B, 109, 115, 307 and 302 read with Sec. 34 I.P.C. seeks his enlargement on bail. The occurrence took place on 20-7-2005 in which accused Nos. 1 and 2 who are hired assassins allegedly engaged by A6 and A7 are said to have dashed a lorry against a Tata Safari Car in which deceased Ramesh and others were travelling and in that accident Ramesh and two others were killed. According to the prosecution, deceased Ramesh who was formerly an employee of accused Nos. 6 and 7 had dissociated from them and had started a rival business thrivingly to the envy of accused Nos. 6 and 7 who planned the "operation road accident".

2. There are altogether 13 accused persons in the case. Accused Nos. 1 to 5 and 7 to 10 were arrested during the latter half of 2005. The petitioner was arrested on 30-09-2005 and he

has been in custody for 532 days.

3. Sri. V.K. Mohanan, the learned Addl. Director General of Prosecutions opposed the application contending inter alia as follows:-

The petitioner and the 6th accused are the main beneficiaries out of the "operation assassination" of Ramesh. The fact that the petitioner was absconding after the occurrence and he could be apprehended only on 30-09-2005 also cannot be brushed aside. There is material to show that after the occurrence, the petitioner rejoiced the successful execution of the ploy by distributing sweets. After the occurrence he along with the 6th accused were in a hide out leaving no clue about their whereabouts. The petitioner is an accused in more than 11 cases of which two are involving offences punishable under Sec. 307 and the remaining are cases alleging cheating. There hand been complaints of intimidating the witnesses. Many of the prosecution witnesses are employees of the concern of which the petitioner is the Managing Director. In case, the petitioner is released on bail he will flee from justice. Complying the parameters laid down in ***Kalyan Chandra Sarkar v. Rajan***

Rajan @ Pappu Yadhav - 2004 (7) SCC 528 and Anil Kumar Tulsyani v. State of U.P. - 2006 (2) KLT 806, the request for bail should be rejected.

4. I am afraid that I cannot agree with the above submissions. It is true that according to the prosecution, the petitioner and the 6th accused are the persons who had allegedly engaged accused Nos. 1 and 2 for executing the "operation assassination" so as to make it appear that it was a road accident. But then the 6th accused who has been in custody from 17-11-2006 onwards and who stands on the same footing as that of the petitioner herein was granted bail as per Order dated 16-3-2007 in B.A. 399 of 2007. In fact, the petitioner has been in remanded custody for far more days than the 6th accused. If ultimately the petitioner is convicted after trial, he may deserve condign punishment. But that is no reason to continue his pre-trial incarceration. Most of the criminal cases against the petitioner are by the subscribers of the chitty company of the petitioner and the 6th accused after the venture had run into rough weather. The apprehensions of the prosecution can be taken care of by imposing appropriate conditions safeguarding

their interests as well. Accordingly, the petitioner is directed to be released on bail on his executing a bond for Rs. 50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like amount to the satisfaction of the J.F.C.M.-I, Alappuzha and subject to the following conditions:-

1. The petitioner shall report before the Investigating Officer between 9 a.m. and 11 a.m. on all Wednesdays until a supplementary final report is received on the file of the Magistrate.

2. The petitioner shall not enter the territorial limits of Mararikkulam Police Station until further orders.

3. The petitioner shall surrender his passport, if any, before the J.F.C.M.-I, Alappuzha and shall not travel beyond the limits of the State of Kerala without the prior permission of the committal Magistrate or the Sessions Court to which he is committed for trial.

4. The petitioner shall make himself available for interrogation as and when required by the police till the filing of the supplementary final report.

5. The petitioner shall not influence or intimidate the prosecution witnesses nor shall he attempt to

tamper with the evidence for the prosecution.

6. The petitioner shall not commit any offence while on bail.

If the petitioner commits breach of any of the above conditions, the bail granted to him shall be liable to be cancelled.

This application is allowed as above.

V.RAMKUMAR, JUDGE.

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